IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

WRIT PETITION NO.213 OF 2005

President Shri.Bhagwant
Shikshan Prasarak Mandal
Barshi and ors. ..Petitioners

Vs.

Suresh Maruti Shinde and Ors. ..Respondents

....

Mr.M.L.Patil for Petitioner
Mr.I.M.Khairdi for respondent no.1.

....

CORAM : B.H.MARLAPALLE,J.

DATE : JANUARY 28,2005

P.C.:

1. Heard Mr.Patil, the learned counsel for the petitioner-Management.

2. The present respondent no.1 was proceeded against under Rule 36 of the Maharashtra Employees of Private School (Conditions of Service) Rules, 1981 and punished by way of termination of service. He approached the School Tribunal in appeal no. 362 of 2004 and questioned the legality of the dismissal order dated 5.5.2004. The learned Presiding Officer of the Tribunal by the impugned judgment and order dated 29.11.2004 held that the enquiry committee

constituted by the Management was in violation of the requirements of Rule 36(2)(a) of the M.E.P.S.Rules, 1981 and therefore, the enquiry proceedings were vitiated. It is held that dismissal order was illegal and void ab initio.

3. There can be no dispute that the enquiry committee did not meet with the requirement of 2(a) of Rule 36 of the M.E.P.S.Rules, 1981 and the Head Master cannot be said to be representing the panel of teachers. In any case, there was no Chief Executive Officer and in addition, the President of the Petitioner-Management had actively participated and acted as one of the members of the enquiry committee. The view taken by the Tribunal, therefore, does not suffer from any errors.

4. Even otherwise, the misconduct attributed to the respondent teacher under the charge sheet issued to him, was regarding his standing guarantee to someone who had obtained loan on the basis of a salary certificate which was bogus. The Management has, admittedly initiated disciplinary action against the concerned Head Master for issuing a false salary certificate. So far as the present respondent teacher is concerned, his standing surety to a third party, cannot be an act of misconduct per se.

5. Under the circumstances, the impugned order does not call for any interference under Article 227 of the Constitution of India.

6. Petition is rejected summarily.

[B.H.MARLAPALLE,J.]